

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 21-20405

NOE GARZA,

Hon. Matthew F. Leitman

Defendant.

/

MOTION TO SUPPRESS

BEFORE THE HONORABLE MATTHEW F. LEITMAN
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Monday, July 25, 2022

APPEARANCES:

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1 Detroit, Michigan
2 Monday, July 25, 2022
3 at about 11:10 a.m.

4 — — —

5 THE CASE MANAGER: All rise.

6 The United States District Court for the Eastern
7 District of Michigan is now in session, the Honorable
8 Matthew F. Leitman, United States District Judge, presiding.

9 You may be seated.

10 The Court calls Case No. 20-20405, United States of
11 America v. Noe Garza.

12 Counsel, please state your appearances on the
13 record.

14 MR. DePORRE: Good afternoon -- good morning, Your
15 Honor. Jules DePorre on behalf of the government.

16 MR. LONGSTREET: Attorney Charles Oliver
17 Longstreet, II, P68205, appearing on behalf of Noe Garza who
18 is seated to my left.

19 THE COURT: Good morning. Welcome to both of you.
20 Please be seated.

21 We're here this morning for final argument on a
22 Motion to Suppress physical evidence that Mr. Longstreet
23 filed.

24 Just to get us all back on the same page here,
25 Mr. Longstreet originally filed the motion. We then held two

1 days of evidentiary hearing on the motion, and then I asked
2 for supplemental briefs. The parties -- or counsel filed
3 those, and they were very helpful. After I read them, I had
4 a few questions, and so I asked to convene this hearing.

5 Mr. Longstreet, do you mind coming to the podium.

6 All right. Mr. Longstreet, I have a few questions
7 for you, but before I ask my questions I want to thank you
8 for the really fine work you did in this case. Your briefing
9 and the way you handled the examination really helped me get
10 my head around some of these issues, so I want to thank you
11 for your fine work.

12 MR. LONGSTREET: Thank you.

13 THE COURT: When I read your supplemental brief,
14 Mr. Longstreet, which were very helpfully in trying to put a
15 bow on everything for me, it occurred to me once again that
16 your position here seems to spring from the premise that in
17 order to justify the entry into the vehicle while it was in
18 the Meijer parking lot, and in order to justify any contact
19 with Mr. Garza, that the initial contact with him -- the
20 initial arrest had to be supported by probable cause and
21 valid. Do I understand that correctly?

22 MR. LONGSTREET: That is accurate.

23 THE COURT: Okay. One of the things that occurred
24 to me when I was rereading the transcript is if you take the
25 officer's contact with Mr. Garza completely off the table,

1 what I want to ask is, why isn't there a series of events
2 that justifies everything that happened here? And let me --
3 that's kind of the broad picture that I want to paint for
4 you, but I want to try to be more specific.

5 What I understand is that your concern that the
6 description that the officers got from Ms. Monpos (phonetic)
7 and the Meijer folks did not match Mr. Garza, and you did an
8 excellent job of bringing that point out, and bringing out
9 your argument that for that reason and because the officers,
10 in your view, had no reason to suspect Mr. Garza of doing
11 anything, they didn't have a basis to speak to him or put
12 hands on him. I understand that argument.

13 But if you set that aside and you do the
14 chronology, what occurs to me is the officers receive a
15 report from Ms. Monpos of the suspected shoplifting happening
16 by a white person wearing a sweat outfit and with a backpack,
17 and that the white person with the sweat outfit and the
18 backpack then goes and gets into a white -- is it a
19 Grand Prix?

20 MR. LONGSTREET: I believe it is a white
21 Grand Prix.

22 THE COURT: Okay. So are you and I on the same
23 page at this point? Do you agree with that?

24 MR. LONGSTREET: We are.

25 THE COURT: Okay.

1 MR. LONGSTREET: I'd have to read the transcript to
2 be for sure, but I would presume the Court is correct.

3 THE COURT: That wasn't even the hard question. I
4 assumed we would be on the same page there. Okay.

5 So as I'm reading through the chronology of the
6 events, the first thing that happens when the officers
7 approach the car is that they have this interaction with
8 Mr. Garza. And for the sake of my discussion with you right
9 now I want to put that totally to the side.

10 But before the officers enter the car they notice
11 the second person in the car, Hutchins.

12 MR. LONGSTREET: In the back seat.

13 THE COURT: And along with Hutchins in the back
14 seat is a backpack. Are you with me so far?

15 MR. LONGSTREET: I'm with you so far.

16 THE COURT: All right. Then they take Hutchins out
17 of the car, still before they've entered the car. And I --
18 you can take my word for it, that's -- in terms of reading
19 the transcript, they get Hutchins out of the car before they
20 start searching the car.

21 MR. LONGSTREET: That's correct.

22 THE COURT: And on page 37 of the transcript what
23 is testified to is that when they get Hutchins out of the
24 car -- I'm on page 37 of the transcript, this is Docket
25 No. 22, pageID.112, Hutchins admits that he was stealing from

1 the store, that he had merchandise still in the backpack in
2 the vehicle, identified Garza as a drug dealer, and stated
3 that there was a firearm in the white Grand Prix.

4 Based on the information from Hutchins that I'm a
5 thief and there's stolen merchandise in the backpack in the
6 car, doesn't that give the officers a basis under the vehicle
7 exception to search the car on the basis that they have
8 probable cause to believe that evidence of a crime will be
9 found in the vehicle?

10 MR. LONGSTREET: They have a right to search the
11 backpack.

12 THE COURT: Okay. So they have a right to enter
13 the vehicle to get the backpack, right?

14 MR. LONGSTREET: To get the backpack, yes, because
15 that's the item that they would believe had contraband in it.
16 To search the entire vehicle itself when they know who the
17 suspect is and they know the suspect is in the back seat and
18 they know the person is in possession of a backpack in the
19 back seat of the vehicle, I don't believe that gives them a
20 total right to search the entire vehicle for contraband when
21 they know specifically the items that were being stolen are
22 inside of a backpack and being possessed by a white person.

23 THE COURT: But remember Hutchins says two things.
24 He says there's merchandise in the backpack in the vehicle,
25 and Garza's a drug dealer with a firearm. Don't they have

1 probable cause to search for a firearm possessed by somebody
2 who is identified as a drug dealer?

3 MR. LONGSTREET: I don't believe that those would
4 be articulable facts or circumstance that would lead a
5 reasonable person to believe that Mr. Garza is the actual
6 person that's possessing a firearm because a person who is
7 suspected of stealing then says he's a drug dealer and had a
8 firearm. And the firearm isn't discovered until the second
9 search, and I believe, if I'm not mistaken, those comments
10 are made by the co-defendant or the co-arrestee at the police
11 station sometime later, not exactly at the scene is what I
12 recall the circumstances to be.

13 THE COURT: On page 40 of the transcript what
14 Officer Fisher testifies to -- he again describes
15 Mr. Hutchins' statement, and he describes how Hutchins'
16 statement led him, Fisher, to enter the car, and he refers to
17 Hutchins' statement as that Mr. Garza was a drug dealer and
18 that there was a gun in the car.

19 Now, I understand your argument that maybe there's
20 a reason to disbelieve a drug dealer, maybe there's reasons
21 to question his credibility and -- and perhaps reasons not to
22 believe him beyond a reasonable doubt at that moment. But
23 when a known person who you have in custody tells you that
24 the other person in the car is a drug dealer and there's a
25 gun in the car, which is what Fisher describes on page 40 of

1 the transcript, doesn't that at least rise to the level of
2 probable cause under the vehicle exception to the search
3 warrant requirement to search the vehicle for a gun?

4 MR. LONGSTREET: No, because it's not really
5 moveable at the time because they have control and seize of
6 the person, the car can't go anywhere, so at that point I
7 think they would need a warrant.

8 THE COURT: But you know -- I mean, it seems to me
9 settled that the vehicle exception does not rest on lack of
10 movability.

11 MR. LONGSTREET: I'm sorry.

12 THE COURT: Your point is that you just made -- let
13 me take a step back and see if we can agree at bite-sized
14 chunks.

15 MR. LONGSTREET: Okay.

16 THE COURT: Do you disagree that when Hutchins says
17 to the officers on the scene, Garza's a drug dealer and
18 there's a gun in the car, do you disagree that that is
19 sufficient to establish probable cause to search the car?

20 MR. LONGSTREET: I do disagree that that is
21 probable cause to search the vehicle at that point.

22 THE COURT: And your basis is what, that it could
23 be a self-serving statement or there's reasons to doubt him?

24 MR. LONGSTREET: That too, and also, it's my
25 understanding -- and I know I didn't brief this particular

1 issue but I'm just speaking from my legal knowledge and
2 experience, that an officer can only make arrest for a felony
3 if the felony is committed within his presence. I don't
4 think the fact that somebody says, hey, that guy has a gun
5 gives him the right to actually go inside of the vehicle and
6 search the vehicle because somebody else says that this guy
7 is a drug dealer and has a gun. I don't believe that's
8 articulable facts and circumstances that would lead a
9 reasonable officer to believe that my client was in
10 possession of an actual firearm.

11 And it is again a self-serving statement made by a
12 third party who was actually stealing inside of the store. I
13 just don't think at this point based on the vehicle exception
14 that that would give the officers rise to go inside of the
15 vehicle and search the entire vehicle for a firearm because I
16 don't believe that the simple statement made by another
17 person gives rise to a search of a vehicle in its entirety.

18 And even with that, the Court -- I would ask the
19 Court to recognize that even after that first search and even
20 after the statement being made, no firearm was found until
21 after -- a few -- or many hours later after a second
22 statement was made at a police station where they go back to
23 the --

24 THE COURT: Look, I don't want to hide the ball.
25 Let me walk through how with how I kind of see the path and I

1 would like you to comment at each step of the path. Let me
2 first give you the whole path and then we'll back up.

3 MR. LONGSTREET: Very good.

4 THE COURT: When I reread this transcript and
5 reread the case law, it occurs to me that it goes like this.
6 Separating out their interaction with Garza, which you raise
7 some serious questions about, that you have the interaction
8 with Hutchins before the search starts and Hutchins says
9 Garza's a drug dealer and there is a gun in the car. And it
10 strikes me that that is probable cause to search the vehicle
11 for the gun. I understand your argument to the contrary, but
12 my inclination is that that is probable cause to search the
13 car both for the items that Hutchins talked about having
14 stolen and to search for a gun.

15 That when they start searching the car, they find
16 all sorts of stuff that is evidence of possible crimes; the
17 Suboxone, the oil or whatever it is they find, and I think it
18 was ammunition. And at that point once they know that Garza
19 is the driver of the car and they find this contraband in the
20 car, then it strikes me that they do have a basis to look up
21 Garza, figure out who he is, figure if there's a valid
22 license plate and if he has a license and if he has a
23 warrant.

24 They then do that and that gives them a basis to
25 take Garza into custody. They find the warrant, they find

1 the contraband in his car, and all of that then gives them a
2 basis to not let him drive the car away, to impound the car,
3 so the car is lawfully in custody. The car is taken then to
4 the impound yard. They then hear from this fellow, the third
5 suspect, Mr. Allen, who tells them during the interview that
6 he believes that Garza may have had a gun, and that he saw
7 Garza open the hood of the car and put something in the
8 engine compartment.

9 So then when you put Mr. Allen's statement combined
10 with Mr. Hutchins' statement, Hutchins says he did have a
11 gun, Allen isn't certain but suspects that he might and saw
12 him open up the engine compartment. When you put that
13 together, I believe there is continuing probable cause to
14 search this car for a gun.

15 And the Supreme Court's decision in *Florida v.*
16 *Meyers* says that even when you've impounded a car, towed it
17 to a lot, locked it up and taken the keys, that eight hours
18 later if there is probable cause to search the car the police
19 can come back and search it, and that that's exactly what
20 happened here.

21 So my inclination is that when you follow the
22 evidence that way there is an appropriate basis for each step
23 of the way, and I wanted to hear your thoughts in terms of
24 responding to that.

25 MR. LONGSTREET: If you look at it in that

1 particular way as it being a continuation of the original
2 stop then there is no argument the defense can really make
3 because it's a continuation argument. It would seem to be
4 the Court is taking a transactional approach and it being one
5 transaction on that the establishment of probable cause from
6 Hutchins, and they get more information on top of that
7 probable cause, simply means that the Court is making the
8 statement that this is a transactional probable cause, that
9 it continued from the original assertion of probable cause
10 from statements made by Hutchins, that probable cause was
11 just duped by a second statement, and with that approach I
12 don't think there is really anything that the defense really
13 could say.

14 THE COURT: Tell me where that approach is wrong.
15 Let's say --

16 MR. LONGSTREET: I can't.

17 THE COURT: Well, what I'm saying is hypothetically
18 let's say in ten minutes I give that as my ruling and I deny
19 the motion, tell me what your appeal brief to the
20 Sixth Circuit would say. It would say Leitman got it wrong
21 here, here, here. Where is that wrong?

22 MR. LONGSTREET: I would need to do legal research,
23 but from my legal experience and ethically I cannot make
24 converse arguments that I know aren't true, so ethically I
25 have to say the Court may be right in that particular

1 position it takes.

2 THE COURT: Is there anything that I said about my
3 course of reasoning that strikes you as obviously wrong or
4 not consistent with this record?

5 MR. LONGSTREET: Well, I disagree with the Court in
6 that Hutchins' statement gives them probable cause to search
7 inside the vehicle. I think it gives him probable cause to
8 search the backpack, not the vehicle itself, and it doesn't
9 give him probable cause to arrest Mr. Garza, and I stand on
10 that position.

11 But if the Court is taking the transactional
12 approach in that it believes that the statement is probable
13 cause and that probable cause is expounded on by the
14 statement of the second defendant, if the Court is taking
15 that approach, then there is no legal precedence that I can
16 think of at this point without doing legal research to argue
17 the contrary, then I'm under the ethical duty to concede.

18 THE COURT: I'm not asking you to concede. I'm
19 just thinking out loud, and I appreciate your candor and how
20 seriously you take your ethical obligations. I'm just -- I
21 wanted to think out loud with you and see if there is
22 anything -- and you've shared the one point where you think
23 I've clearly diverged from your view.

24 Is there anything else that you would want to say
25 about my path through this?

1 MR. LONGSTREET: I would just think that the arrest
2 of Hutchins would only give the officers at maximum an
3 ability to search the wingspan of Hutchins, but I don't think
4 it gives them probable cause just the fact that he says
5 there's a firearm inside the car or Garza's a drug dealer and
6 we were stealing for him and he has a gun inside the car does
7 not give them probable cause to search the entirety of a
8 vehicle for a firearm based on self-serving statements of a
9 co-defendant. I just don't believe that to be the case.

10 THE COURT: Okay. I want to ask Mr. DePorre a few
11 questions but I want to make sure I give you an opportunity
12 to share any other thoughts that you want to share at this
13 point.

14 MR. LONGSTREET: Umm --

15 THE COURT: Here's what you don't need to convince
16 me of at this point. You don't need to convince me at this
17 point that there was a basis to arrest or approach Mr. Garza
18 the moment the officers did contact him. You know, your
19 argument is they were wrong in grabbing him out of car. You
20 don't need to convince me of that because, again, the way I
21 see it, this doesn't turn on whether that was lawful. You
22 also don't need to convince me that the last search can't be
23 upheld as an inventory search because I don't think that's
24 necessary to get to the way I see this thing ending up.

25 So with kind of clearing away that underbrush, is

1 there anything else that you want to share with me?

2 MR. LONGSTREET: May I have a moment to ponder?

3 THE COURT: Sure. In fact, you can sit down, and I
4 can ask Mr. DePorre my questions, and then I'm happy to hear
5 from you again.

6 MR. LONGSTREET: Very good.

7 THE COURT: Okay. Thank you.

8 Mr. DePorre, in your papers you highlight
9 Mr. Hutchins' statements to Office Fisher before the search
10 happens, but Mr. Longstreet says that those statements don't
11 establish probable cause to search the vehicle for a gun.
12 What do you think?

13 MR. DePORRE: I think that those statements --
14 there are really two statements that Mr. Hutchins makes with
15 respect to Mr. Garza. The first is that he's a drug dealer.
16 When the officers approach the car to search it, they see
17 immediately and in plain view near the backpack paraphernalia
18 which is consistent with drug dealing.

19 THE COURT: Is that before they enter the car?

20 MR. DePORRE: No, that's -- but if they were to be
21 confined to a search of Mr. Hutchins' wingspan, they would
22 readily see drug paraphernalia consistent with drug
23 distribution.

24 THE COURT: Can you give me just one second. Can
25 you direct me to where in the transcript that part is, that

1 when they start searching, they see the drug paraphernalia in
2 plain view near the backpack?

3 MR. DePORRE: Certainly, Your Honor. It may take a
4 moment to find it here in the -- because we had two
5 transcripts.

6 THE COURT: Are you referring to page 45?

7 MR. DePORRE: Yes, Your Honor. So at page 45, it
8 is pageID.120, line 17, they discuss -- he discusses a metal
9 tray that he observes when he first contacts the driver. He
10 opens the driver's door and observes this metal tray, which
11 was between the driver's seat and the jam of the driver's
12 side door, and there was methamphetamine in that metal tray.

13 The investigating officer in this case,
14 Officer Fisher, understood that the metal tray could be used
15 in -- he stated that they are commonly sold in head shops,
16 gas stations, alongside pipes or rolling papers. It is very
17 common to find them to contain drugs, most often marijuana.

18 THE COURT: Well --

19 MR. DePORRE: He also talked about finding
20 syringes.

21 THE COURT: Where does he say he found the
22 syringes?

23 MR. DePORRE: That's in --

24 THE COURT: On page 46, that's pageID.121, you ask
25 him did he find any syringes in the car, and he says he did.

1 But does he say where he found them?

2 MR. DePORRE: It sounds like they -- it does not
3 sound like there was a reference to the location of the
4 syringes. There is discussion that he found butane bottles
5 commonly used to manufacture marijuana wax in the trunk of
6 the car, and I believe there was shoplifted paraphernalia
7 also in the trunk.

8 THE COURT: Right. What I'm focusing on here is --
9 so I'm trying to establish if Hutchins' statement to the
10 officers on the scene that Garza is a drug dealer and there's
11 a firearm in the car would authorize a search of the vehicle.
12 And one of the things you -- your answer to that was well,
13 don't just focus on Hutchins' statement that -- I understood
14 you to say that Hutchins' statement gets them at least in the
15 car reaching for the bag, and that in plain view once they do
16 that, they see drug paraphernalia that gives them additional
17 cause to do additional searching.

18 But you pointed me to this tray that's on the
19 driver's side between the driver's door and the driver's
20 seat. Is that something that I could say was in plain view
21 when they reached in from the passenger's side to grab the
22 backpack?

23 MR. DePORRE: I would have to look at the exhibits.
24 I think -- the general point that I was trying to make are
25 that Mr. Hutchins makes certain statements, and then during

1 the course of the investigation those statements continually
2 are corroborated. And so for -- I believe that his
3 statements alone would give officers probable cause to search
4 the entire vehicle, that's part one. But part two, even if
5 the Court were inclined to disagree say because the defendant
6 had been recently arrested for shoplifting or for some other
7 reason, that the statements are corroborated so officers
8 weren't unreasonable in relying on Mr. Hutchins' statements.

9 And I can't pinpoint for the Court an exact
10 timeline because it wasn't really something explored on the
11 record as to what objects were found within Mr. Hutchins'
12 immediate vicinity. What I can say is --

13 THE COURT: But you're saying at least Hutchins
14 confesses to having stolen materials in the backpack, they
15 find stolen materials in the backpack, and so you would say
16 at that moment in your view confirmed his credibility and
17 that justifies additional reliance on what he said or
18 continued reliance?

19 MR. DePORRE: Yes, Your Honor, yes. And they
20 also -- he also says there's somebody else in the Meijer
21 store shoplift, and then they go into the Meijer store, and
22 they find somebody else shoplifting, and that again confirms
23 the -- Mr. Hutchins' statements.

24 The arrest of the person identified as S2,
25 Mr. Allen, is prior to the full search of the Meijer

1 Grand Prix in which Officer Fisher found the nine-millimeter
2 ammunition.

3 THE COURT: What else do you want to tell me?

4 MR. DePORRE: I just wanted to be clear, the
5 buprenorphine sublingual tablets or tabs that are found are
6 found on Mr. Garza during that initial search. So what we
7 have is three searches with three different types of evidence
8 in this case. The first search is immediately upon arrest
9 officers find buprenorphine in Mr. Garza's pocket.

10 THE COURT: I was not focused on the initial
11 seizure of Mr. Garza, that's a lot closer question so I was
12 trying to keep that out of my analysis.

13 MR. DePORRE: I would tend to agree with the Court
14 on that, and I just wanted to make sure that the facts in the
15 record were clear regarding that.

16 I think the second seizure results in the bullet --
17 the ammunition round, and then the third search and seizure
18 is of the firearm. So I just wanted to be precise in terms
19 of the timeline and the evidence that would flow from each
20 search.

21 THE COURT: Okay. Anything else, Mr. DePorre?

22 MR. DePORRE: No, Your Honor. Thank you.

23 THE COURT: All right. Thank you.

24 Mr. Longstreet, I promised you the last word. Any
25 additional thoughts from you?

1 MR. LONGSTREET: Yes. I'd just like to say that
2 *Arizona v. Gant* restricts the officer's authority to search
3 the vehicle based on a search instant to arrest, and the
4 premises that the arrestee is unsecured within the reaching
5 distance of the passenger compartment when the search is
6 conducted. And two, there is reasonable belief that the
7 evidence relevant to the crime of arrest will be found in the
8 vehicle.

9 So I think the Court's application that Hutchins'
10 statement is enough to search the car is overly broad in that
11 the purpose of the arrest was not to find a gun and drugs,
12 the purpose of the arrest was to stop shoplifting. And to
13 apply that particular standard the Court is looking at in the
14 transactional sense will be -- would be an overbroad
15 application of the rule in that the search that was -- or the
16 search that would be allowed would be for the fruits of
17 shoplifting, not firearms because a snitch decides he wants
18 to tell on somebody else because he just got caught. I think
19 that would be an overbroad application. That would be my
20 only answer to the Court's suggestion, and that it's an
21 overbroad application pursuant to *Arizona v. Gant*.

22 THE COURT: Thank you. I appreciate that argument.

23 Before I walk through my ruling, I want to say I
24 don't believe *Gant* to be the controlling precedent with
25 respect to how I'm seeing this case. I'm not suggesting that

1 the search of the vehicle was authorized as a search incident
2 to an arrest. I think what *Gant* is talking about is when
3 there's a valid arrest and somebody's trying to use the
4 arrest as the basis to get into the car, that's the limit
5 that I understand *Gant* to be talking about.

6 I am -- I'm looking at something entirely separate
7 which is the vehicle exception to the warrant requirement
8 that I don't understand to be necessarily tied to or
9 dependent on the Search Incident to Arrest Doctrine.

10 Let me walk through how I see it. Again, the
11 comments have been very helpful, and I want to take it in
12 terms of steps.

13 So the way I see this case is Officer Fisher
14 receives information from Ms. Monpos that there is somebody
15 engaged in shoplifting in the Meijer store. It's a white
16 person wearing sweatpants. The person is interdicted by
17 Meijer personnel, loss prevention personnel. They make
18 contact with him. He relinquishes some materials but will
19 not allow them to look in the backpack. He leaves. They
20 watch him get into a white car. The person that gets into
21 the white car does not match the description of Mr. Garza.

22 At that point, Officer Fisher approaches the white
23 car and takes Mr. Garza out and puts him in handcuffs. I'm
24 not ruling for purposes of my determination on the motion
25 that that was a valid contact with Mr. Garza or that

1 Mr. Garza was validly arrested. I don't think that the
2 validity of the seizure here depends on Mr. Garza being
3 validly arrested for the reasons that I'm going to give.

4 After the contact with Mr. Garza, Mr. Fisher's
5 colleague -- I can't place his name at the moment here -- has
6 contact with I guess it's Sergeant Johnson. Gets
7 Mr. Hutchins out of the car -- out of the back seat of the
8 car. There's yet been no search of the vehicle. And at that
9 point Mr. Hutchins, on page 37 of the transcript -- this is
10 pageID.112 of Docket No. 22. At that point Mr. Hutchins
11 admits that he was stealing from the store, he admits that he
12 still has stolen merchandize in his backpack in the vehicle.
13 He identifies Mr. Garza as a drug dealer, and states that
14 there was a firearm in the vehicle.

15 I ultimately conclude that Mr. Hutchins' statement
16 supports probable cause under the vehicle exception to the
17 warrant requirement to search the vehicle for a firearm.

18 As an initial matter, Mr. Hutchins' statement is at
19 least in part against his interest. He confesses to having
20 done the stealing. He confesses to having merchandize still
21 in his car. Now, certainly the part about Mr. Garza and the
22 firearm is not against his interest but the fact that he does
23 make statements against his interest I think supports a
24 finding of some credibility. Also he's -- he's certainly not
25 an anonymous person giving information about probable cause;

1 he's standing right there in front of the officers.

2 And then I think Mr. DePorre makes another
3 important point, that also before the search of the vehicle
4 begins Mr. Hutchins says that there's a third individual in
5 the store committing shoplifting, and the police confirm that
6 aspect of Mr. Hutchins' story before beginning the stop, but
7 I want to make sure I give the cite to that.

8 On page 40 of the transcript, Docket No. 22,
9 pageID.115, Officer Fisher testifies that the third suspect
10 was secured in Sergeant Johnson's patrol car and at that
11 point the inventory search began. So I think Mr. DePorre
12 makes a fair point when he indicates that before the search
13 of the vehicle begins another aspect of Hutchins' story has
14 been corroborated.

15 And then once the officers start conducting the
16 search they find the stolen batting gloves from Meijer, and I
17 think that confirms yet another part of Mr. Hutchins' story.

18 So if, even assuming arguendo, that out of the gate
19 that officers only had probable cause based on Hutchins'
20 statement to search the backpack, once they confirm that he's
21 accurately admitted stealing stuff and that it's in the
22 backpack, I think that gives them an additional basis to keep
23 going based on his statement that there's a firearm in the
24 car.

25 But I want to be clear that in my view, even before

1 the officers start their search, I believe Hutchins'
2 statement under the totality of the circumstances gave them
3 probable cause to search the vehicle -- the entire vehicle
4 for a firearm.

5 In the course of that search that I believe was
6 permissible, they find a number of items of contraband. They
7 find the methamphetamine. They find suspicious digital
8 scales. They find the butane. And at that point I believe
9 they have a basis to interact with Mr. Garza as the driver --
10 as the driver of the car to determine whether the license
11 plate of the car is valid, to determine whether Mr. Garza has
12 a valid license, and that line of inquiry, which again I
13 believe is permissible, leads them to conclude that he does
14 not. At that point I believe the officers lawfully may and
15 do take the vehicle into custody and tow it and seize it to
16 the tow yard.

17 After it's towed, the officers conduct an
18 additional interview with this gentleman named Mr. Allen, and
19 Mr. Allen tells them during his interview that he's a heroin
20 user, that he was stealing on behalf of Mr. Garza to pay him
21 back for some heroin, I believe. And he indicates that while
22 he's not certain Mr. Garza had a gun, he saw Mr. Garza prior
23 to the trip to Meijer open the hood of the car and put
24 something in the engine compartment and that it may have been
25 a gun. This is on Docket No. 22, pageID.129 and 130.

1 And I believe that when you read Mr. Allen's
2 statements in conjunction with the earlier statements by
3 Mr. Hutchins, at that point again in my view the police
4 already had probable cause to search the vehicle for a
5 firearm, but at that point I believe they have probable cause
6 to search again under the hood, so the vehicle exception
7 comes into play.

8 And under *Florida v. Meyers*, even though the
9 vehicle has been towed to a tow yard and impounded, and even
10 though Mr. Garza is not able to drive it away at that point,
11 clearly *Florida v. Meyers* says the vehicle exception would
12 authorize another warrantless search of the vehicle in the
13 tow yard where there is probable cause, and for the reasons
14 I've stated I believe that the statements of Hutchins and
15 Allen provide probable cause for the second search to search
16 under the hood. And so I think that this path forward makes
17 suppression inappropriate here because I think there's a
18 basis for each step in the analysis.

19 But Mr. Longstreet's made some serious arguments
20 that perhaps Mr. Hutchins' statements on the scene were not
21 sufficient to support probable cause to search the vehicle
22 without a warrant. If Mr. Longstreet is right -- I
23 respectfully disagree with him, but he's a wonderful lawyer
24 and he's made some serious arguments. Even if he were right,
25 I would not suppress the evidence here because I think that

1 under *Herring* this is not a case where the value of
2 suppression -- where the deterrent value of suppression
3 outweighs the costs.

4 I think that if the officers made a mistake in
5 determining that the Hutchins' statements were enough, or if
6 those statements were not enough to establish probable cause,
7 it would still be a good-faith mistake within the realm of
8 reasonable disagreement, and so I wouldn't think that
9 suppression was appropriate under *Herring* on the facts of
10 this case.

11 Now, I want to be clear, I may see things
12 differently if the Hutchins' interactions were not part of
13 this case. I think that Mr. Longstreet raised a number of
14 very serious concerns about the initial interaction with
15 Mr. Garza, but the path that I see through this evidence is
16 one that doesn't depend in anyway on the initial interactions
17 with Mr. Garza as having been lawful. So for those reasons I
18 am going to deny the Motion to Suppress.

19 Again, thanking Mr. Longstreet for really
20 outstanding work in framing the issue and raising it. And
21 thank you, Mr. DePorre, also for the very helpful input from
22 the government in working may way through these issues.

23 So the next step I guess would be to set a plea
24 cut-off and a trial date. Is that the next step?

25 MR. DePORRE: Yes, Your Honor.

1 THE COURT: All right. Do you guys want to work
2 with Ms. Monda to find a time and date that works for
3 everybody? Does that make the most sense for you,
4 Mr. DePorre?

5 MR. DePORRE: It does.

6 THE COURT: Mr. Longstreet, does that work for you?

7 MR. LONGSTREET: I'm sorry. Say that one more
8 time, please.

9 THE COURT: Yeah. So it seems to me the next steps
10 would be to set a final pretrial conference, a plea cut-off,
11 a final pretrial conference and a trial date, if necessary.
12 So my thought was that you guys could work with Ms. Monda off
13 the record to find those dates.

14 MR. LONGSTREET: I think that would be sufficient.

15 THE COURT: Anything else for you, Mr. Longstreet?

16 MR. LONGSTREET: Not at this time.

17 THE COURT: Mr. DePorre.

18 MR. DePORRE: No, Your Honor. Thank you.

19 THE COURT: Okay. Thank you very much. We're
20 adjourned.

21 THE CASE MANAGER: All rise. Court is in recess.

22 (Proceedings concluded at 12:00 p.m.)

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C E R T I F I C A T I O N

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of USA vs. Garza, Case No. 21-20405, on Monday, July 25, 2022.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 07/22/2023
Detroit, Michigan